

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MEEKER COOPERATIVE LIGHT AND POWER
ASSOCIATION

and

Case 18-CA-16924

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, IBEW LOCAL 160

Pamela W. Scott, Esq., of Minneapolis, MN,
for the General Counsel.

Richard A. Williams Jr., Esq., of Roseville, MN,
for the Charging Party.

George E. Warner, Senior Consultant, of Plymouth, MN,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. The parties agreed to waive a trial and stipulate the case directly to an administrative law judge for issuance of a decision.¹ A complaint and Notice of Hearing (complaint) issued on September 15, 2003² by the Acting Regional Director for Region 18 of the National Labor Relations Board (the Board). The original charge was filed by International Brotherhood of Electrical Workers, IBEW Local 160 (the Charging Party or Union) alleging that Meeker Cooperative Light and Power Association (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to furnish the Union with necessary and relevant information concerning contracting out bargaining unit work.

On the entire stipulated record, and after considering the briefs filed by the General Counsel, Charging Party and the Respondent, I make the following

¹ By Order dated October 9, 2003, the hearing was postponed indefinitely.

² All dates are in 2003 unless otherwise indicated.

provided with the requested information. Thus, the Union needs the information to decide how or whether to proceed with the subject grievances or any other grievance.

The Respondent asserts that the grievance procedure requires that the Union identify a specific provision of the parties' agreement to have been violated, and that the subject grievances do not meet this requirement. Further, the Respondent denies that the parties' agreement has been violated because the work subcontracted by it on the two occasions, if it occurred, was not a violation of the parties' agreement or past practice.

C. Analysis

In *Fiberboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964), the Supreme Court upheld the Board's ruling that an economically founded decision to subcontract maintenance work was a mandatory subject of bargaining. Likewise, the Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada Builders Assn.*, 274 NLRB 350, 351, (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.*, 172 NLRB 1909 (1968). In *Daimler Chrysler Corp.*, 331 NLRB 1324 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002), the Board held that the employer's duty to bargain includes the obligation to provide information that a union needs for the processing of grievances and the investigation of potential grievances.

The arguments advanced by the Respondent in the subject case are misplaced. In this regard, the Respondent does not address the necessity or relevancy of the requested information. Rather, the Respondent's reasoning for not providing the information is that the underlying grievances do not have merit.³ While ultimately that may be the case once the grievances are heard by an arbitrator under the parties' grievance and arbitration procedure, the issue in this case is whether the Union needs the information so it intelligently can determine whether it should proceed to arbitration or file additional grievances. In these circumstances, I find that the information is relevant and necessary to the Union's interest in policing the Respondent's compliance with the terms of the parties' collective bargaining agreement. *Crowley Marine Services*, 329 NLRB 1054, 1060 (1999), enfd. 234 F.3d 1295 (D.C. Cir. 2000). Accordingly, the Respondent has an obligation to supply the requested information and its refusal to do so violates Section 8(a)(1) and (5) of the Act. *Reiss Viking*, 312 NLRB 622 (1993).

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

³ While the Respondent argues that since the parties' agreement does not contain an article relating to contracting out work, it has the absolute right to contract out work as long as the action is performed in good faith, it ignores Article III of the agreement that covers working rules, hours, wages and other definite conditions of employment for all employees covered by the agreement. Thus, the grievances concern a controversy arising over the interpretation of the parties' agreement and involve a mandatory subject of bargaining.

3. At all relevant times, the Union has been the exclusive collective-bargaining representative of the following employees of Respondent in an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

All full-time and regular part-time journeyman and apprentice lineman, groundmen, and foremen employed by Respondent at or out of its Litchfield, Minnesota facilities: excluding office clericals, and guards and supervisors as defined in the Act, as amended.

4. By failing and refusing to furnish the Union with the information requested in its March 24, as subsequently modified on April 14, 2003, information requests, the Respondent has failed to fulfill its statutory obligations and has thereby engaged in, and is, engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Meeker Cooperative Light and Power Association, Litchfield, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, IBEW Local 160, by refusing to furnish them with the information requested in its March 24 and April 14, 2003 information requests regarding whether certain bargaining unit work was contracted out.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Furnish International Brotherhood of Electrical Workers, IBEW Local 160, with the information it requested in its March 24 and April 14, 2003 information requests regarding whether certain bargaining unit work was contracted out.
- (b) Within 14 days after service by the Region, post at its facility in Litchfield,

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Minnesota copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2003.

- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 23, 2003

Bruce D. Rosenstein
Administrative Law Judge

⁵ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT in any like or related manner interfere with restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as your exclusive bargaining representative.

Meeker Cooperative Light and Power Association

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

330 Second Avenue South, Towle Building, Suite 790, Minneapolis, MN 55401-2221

(612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (612) 348-1770.

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